

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEREMY JONES,

Plaintiff,

v.

AYON,

Defendant.

No. 1:21-cv-00809-JLT-SAB (PC)

**ORDER DIRECTING DEFENDANT TO FILE
A RESPONSE TO PLAINTIFF'S NOTICE OF
VOLUNTARY DISMISSAL BY
SEPTEMBER 6, 2024**

(ECF No. 66)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's notice of voluntary dismissal, filed August 30, 2024. The notice states that Plaintiff moves to voluntarily withdraw this action initiated pursuant to 42 U.S.C. § 1983. (*Id.*)

"[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the district court lacks jurisdiction to do anything about it." *Id.* at 1078.

Federal Rule of Civil Procedure 41(a)(1)(A)(ii) further provides that a "plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties

1 who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

2 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
3 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is
4 addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co.
5 Inc., 679 F.2d 143, 145 (9th Cir. 1982).

6 As Defendant has already filed an answer and Plaintiff’s notice of voluntary dismissal
7 includes only his signature, Plaintiff may not dismiss this action pursuant to Rule 41(a)(1).
8 Instead, the Court finds it appropriate to construe the notice as a motion for voluntary dismissal
9 under Rule 41(a)(2). Therefore, Defendant is directed to file an opposition or statement of non-
10 opposition to the motion. Alternatively, Defendant may obtain a stipulation of dismissal that is
11 signed by all parties appearing in this action. Any stipulation should specify whether this action
12 will be dismissed with or without prejudice.

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. Plaintiff’s notice of voluntary dismissal (ECF No. 66) is construed as motion for
15 voluntary dismissal; and
- 16 2. On or before **September 6, 2024**, Defendant shall file either:
- 17 a. An opposition or statement of non-opposition to Plaintiff’s motion for voluntary
18 dismissal; or
- 19 b. A stipulation to dismiss this action pursuant to Federal Rule of Civil Procedure
20 41(a)(1)(A)(ii), signed by all parties appearing in this action and specifying
21 whether this action will be dismissed with or without prejudice.

22
23 IT IS SO ORDERED.

24 Dated: **September 3, 2024**


UNITED STATES MAGISTRATE JUDGE